

<p style="text-align: center;">STATE PRESERVATION NOTICE REQUIREMENTS RIGHTS AND RESPONSIBILITIES Pursuant to Government Code Sections 65863.10, 65863.11, and 65863.13</p>

(For the actual statutory language refer to <http://www.leginfo.ca.gov>)

1. What notices are property owners required to provide?

Owners are required to submit the following four notices:

- a. **Owner's Twelve and Six Month Notices of Intent to Prepay or Terminate To Tenants.** Owners of certain federally-subsidized multifamily rental housing developments are required to notify affected tenant households and public agencies of their intent to prepay a federally-assisted mortgage, terminate mortgage insurance, or terminate rent subsidies (opt-out of Section 8 project-based rental assistance) twelve and six-months prior to the eligible date of prepayment or termination (unless they qualify for exemption pursuant to Government Code Section 65863.13).
- b. **Twelve Month Notice of Opportunity to Submit an Offer to Purchase to Qualified Entities and limitations on an owners right to sell.** Any owner of a federally-assisted at-risk multifamily housing development whose intent is to sell or discontinuance use as an assisted housing development, must provide an exclusive twelve-month **Notice of the Opportunity to Submit an Offer and Counteroffer To Purchase** the affected rental properties to **Qualified Entities**. **Qualified Entities** must agree to maintain long-term affordability and preserve of the project. [Government Code Section 65863.11(g)]. The **Notice of the Opportunity** to Qualified Entities may be provided prior to, or concurrent with, the twelve-month **Notice of Intent** sent to tenant households.
- c. **Owner's Six Month Notice to Affected Public Agencies.** Owners are required to provide public agencies with specific project and tenant information in conjunction with the six-month Notice of Intent. Owners are only required to report project and tenant information in existing and updated tenant and project records. Owners are not liable for inaccuracies in tenant and project records.
- d. **Owner's Notice of Significant Change to Tenants.** Owners must notify each affected tenant household and affected public agencies within seven business days of any change in the prepayment or termination date or amount and date of new rents.

2. When are notices from owners due and who receives them?

Type of Notice	When	Parties
Intent to Prepay or Terminate cc: to Public Agencies	6 & 12 Months	Tenants
Opportunity to Submit an Offer Posted at Development	12 Months within 15 days of request	Qualified Entities
Notice to Public Agencies cc: HCD, HUD, PHA	6 Months	City or County
Notice of Change	Within 7 days of any change	Tenants

3. Notices are required on which rental properties? [Government Code Section 65863.10(b)(1)]

State Notice requirements apply to any multifamily rental housing development with a recorded regulatory agreement stating it is an assisted housing development and receives governmental assistance under any of the following federal programs:

a. HUD-assisted

- Section 8 New Construction, Substantial Rehabilitation, Moderate Rehabilitation, Property Disposition and Loan Management Set-aside programs, or any other program providing project-based assistance under Section 8 of the United States Housing Act of 1937, as amended;
- Section 221(d)(3) Below-Market-Interest-Rate Mortgage Insurance Program of the National Housing Act;
- Section 236 Interest Reduction Payment Program of the National Housing Act;
- Section 202/811 Direct Loans for Elderly and Handicapped Persons of the Housing Act of 1959; and
- Section 101 Rent Supplement Programs of the Housing and Urban Development Act of 1965, as amended.

b. FmHA-Assisted

- Section 515 Rural Rental Housing Loan Program of the Housing Act of 1949, as amended, now administered by the Rural Housing Service of the U.S. Department of Agriculture.

c. Tax Credit-Assisted

- Section 42 of the Internal Revenue Code.

4. **What must be included in the Twelve Month Notice Of Intent To Prepay or Terminate sent to Tenants? See the Sample Letter to Tenants.**
[Government Code Section 65863.10(b)(1)]

- a. A statement of the owner's intent to terminate the subsidy contract or rent restrictions upon expiration;
- b. A statement of the owner's intent to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to the maturity date or cancel the mortgage insurance;
- c. The *anticipated* date of termination or prepayment;
- d. Identify applicable federal program (see rental properties above);
- e. A statement that the low-income affordability restrictions in the applicable contract or regulatory agreement will be removed;
- f. A statement that the owner may elect to keep housing in the federal program after the proposed termination or prepayment date;
- g. A statement that other governmental assistance (Section 8 tenant-based rental assistance) may be provided to tenants at the termination or prepayment date;
- h. A statement that the required notice of proposed change (including changes in rent) will be provided six-months prior to the termination or prepayment date;
- i. A statement that the required notice of opportunity to submit an offer to purchase from the owner to **Qualified Entities** has been sent and is posted in the common area of the development *[Government Code Section 65863.11]*.

5. What must be included in the twelve-month Notice of an Opportunity To Submit Offer To Purchase sent to Qualified Entities?

- a. The terms of assumable financing, if any;
- b. The terms of the subsidy contract, if any;
- c. Any proposed improvements to the development to be made by the owner in connection with the sale;
- d. A statement that each qualified entity has the right to purchase the development;
- e. Itemized lists of the following information:
 - 1. Monthly operating expenses;
 - 2. Capital improvements made within the two preceding calendar years;
 - 3. The dollar amount of project reserves;
 - 4. Copies of the two most recent financial and physical inspection reports on the development, filed with federal, state or local agencies, if any;
 - 5. The most recent rent roll listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date of the Notice of Intent; and
 - 6. The vacancy rate for the development for each of the two preceding calendar years.
- f. A written statement that all twelve month notice requirements have been satisfied.

6. What happens 180 days after the owner's twelve month Notice of Opportunity? [Government Code Sections 65863.11(i-k)]

During the first 180 days from the date of the Owner's **Notice of the Opportunity to Submit an Offer to Purchase**, the owner may only accept bona fide offers to purchase from Qualified Entities. A qualified entity offering to purchase an assisted development must:

- a. Make a bona fide offer to purchase within the first 180 days from the date of the owner's **Notice of the Opportunity to Submit an Offer to Purchase**;
- b. Identify whether the qualified entity is a tenant association, nonprofit organization, public agency, or profit-motivated organization or individual;
- c. Certify, under penalty of perjury, that the qualified entity meets all the requirements;
- d. Execute a purchase agreement, upon the owner's acceptance of the qualified entity's bona fide offer to purchase; and
- e. Request an appraisal of the property to determine the fair market value of the development. The appraisal is to be performed by an independent appraiser qualified to perform multifamily housing appraisals. Either party may request an appraisal. The appraiser is to be selected and paid by the requesting party. The appraisal is non-binding on either party as to the sales price of the development or the acceptance or rejection of the bona fide offer to purchase.

7. What is a Right-of-First Refusal? [Government Code Sections 65863.11(l)]

After the first 180-day period, an owner may accept a bona fide offer to purchase the affected property from a non-qualified individual or entity; e.g. an entity that does not intend to maintain required affordability and use restrictions. The owner's acceptance of such an offer is subject to the following Right-of-First-Refusal (Counteroffer) process:

- a. The owner must notify each qualified entity that submitted a bona fide offer to purchase the development, of the terms and conditions of the pending offer in writing, by certified mail, return receipt requested.
- b. Qualified Entities that previously submitted a bona fide offer to purchase have 30 days from the date the owner's notice of the terms and conditions of the pending offer is mailed, to submit a response. These Qualified Entities can submit a bona fide counteroffer to purchase the development. The counteroffer must include the same terms and conditions as the pending offer, unless the original terms and conditions are modified by mutual consent of both parties.

- c. The owner is required to accept a qualified entity's bona fide counteroffer to purchase the development at the same terms and conditions as the pending offer unless the individual or entity making the pending offer agrees to maintain affordability and use restrictions. In such cases, the owner must certify, under penalty of perjury, that the buyer agrees to obligate itself and any successor in interest to maintain the use restrictions and the affordability of the assisted households of very low, low, or moderate income for either a 30-year period from the date the purchaser took legal possession, or the remaining term of the existing federal assistance, which ever is greater.

8. What types of organizations can act as Qualified Entities? [Government Code Section 65863.11(d)]

- a. Tenant associations of affected developments.
- b. Local nonprofit organizations and public agencies.
- c. Regional or national nonprofit organizations and public agencies.
- d. Profit-motivated organizations or individuals.

9. What criteria must a Qualified Entity meet in order to qualify? [Government Code Section 65863.11(e)(1-3)]

- a. Be financially capable of managing the housing for its remaining useful life, either by itself or through a management agent;
- b. Agree to obligate itself and any successors to maintain the housing development affordable for households of very low, low, or moderate income for either a 30-year period from date the purchaser took legal possession, or the remaining term of the existing federal government assistance, whichever is greater;
- c. Agree to maintain the occupancy of very low, low, and moderate income tenants in the approximate percentages that existed at the time the Notice of Intent to Terminate or Prepay was given, or the approximate percentages specified in the existing use restrictions, whichever is higher;
- d. Agree to renew subsidies, if available, and if the subsidies are sufficient to maintain the project's economic feasibility;

- e. If the development is determined not to be economically feasible as defined in Section 17958 (h) of the Revenue and Taxation Code, one or more units may be removed from rent and occupancy requirements. Upon restoring the development's economic feasibility, the purchaser must designate the next available units as low-income units, up to the original number of removed units;
- f. Prohibit a local nonprofit organization or public agency from purchasing a development in which a member of its governing board has a financial interest; and
- g. Record affordable rent and use restrictions in a regulatory agreement.

10. How do owners obtain the list of Qualified Entities?

HCD makes the list available to owners upon request and the receipt of the State twelve-month **Notice of Intent to Prepay and/or Terminate**. The list is also available at HCD's website. <http://www.hcd.ca.gov/hpd/hrc/tech/presrv/>.

11. What conditions exempt Owners from the Opportunity to Submit an Offer and Right-of-First Refusal? [Government Code Section 65863.11(m)]

- a. A government taking by eminent domain or publicly negotiated purchase;
- b. A forced sale pursuant to a foreclosure;
- c. A transfer by gift, devise, or operation of law;
- d. A sale to a person who would be included within the table of descent and distribution if there were to be a death in testate of an owner, and;
- e. An owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the Right-of-First-Refusal requiring immediate access to the proceeds of the sale of the development.

12. Are there other owner exemptions? [Government Code Section 65863.11(b)]

Any owner who gave notice to tenants and the city or county in which the development is located of the owner's intent to prepay or terminate prior to January 1, 2001, is exempt from the requirements of Government Code Section 65863.11.

13. What must the owner include in the Six Month Notice of Intent To Tenants? See the Sample Letter to Tenants. [Government Code Section 65863.10(c)(1-2)]

- a. The date of termination or prepayment;
- b. Identity of applicable federal program (see rental properties above);
- c. A statement that a copy of the notice will be sent to the city or the county where the assisted housing development is located, to the local housing authority (if any), and to HCD;
- d. A statement that the owner may elect to keep housing in the federal program after the proposed termination or prepayment date;
- e. A statement of the owner's intent to participate in any replacement federal subsidy program available to tenants; and
- f. A list of contact and resource information about the rights and options of tenants including the name and telephone number of the city, county, city and county, the local housing authority (if any), HCD, and area legal services organizations. See Tenant Resources.

14. What must the owner include in the Six Month Notice To Local Government (Affected Public Agencies)? See the Sample Letter to Public Agencies. [Government Code Section 65863.10(c)(3)]

- a. Number of affected tenants.
- b. Number of assisted units.
- c. Number of bedrooms in assisted units.
- d. Type of federal assistance provided by program type.
- e. Number of units not assisted.
- f. The age and income of all affected tenants.

- g. A description of the owner's plans for the project including:
- The timetable for any subsequent governmental actions (i.e. renewal of Section 8) or approvals to be obtained; and
 - The reason for termination or prepayment;
 - A listing of any other contacts with governmental agencies or others.
- h. Copies of prior required federal notices.

15. How must owners serve Notices?

The **Notices of Intent**, **Notice to Affected Public Agencies**, and **Notice of Significant Change** must be served by first-class mail with prepaid postage to each affected tenant household and public agencies. [*Government Code Section 65863.10(f)*]

The **Notice of the Opportunity to Submit an Offer To Purchase** must be sent from the owner to Qualified Entities by registered or certified mail, return receipt requested. A copy of the Notice is also to be posted in a conspicuous place in the common area of the development.

16. What happens if owners do not comply with the Notice requirements?

- a. Injunctive relief is available to any affected tenant or public agency adversely affected by the violation of *Government Code Sections 65863.10 or 65863.11*.
- b. Any qualified entity entitled to exercise the **Opportunity to Purchase and Right-of-First-Refusal** adversely affected by the owner's failure to comply, may also seek relief. No claims against owners for violation of *Section 65863.11* shall arise if the individual or entity is not, in fact, a qualified entity.
- c. Any person or entity acting as an escrow agency for the transfer of affected properties shall not be held liable for failure to comply, unless the escrow agency had actual knowledge of the requirements of *Section 65863.11* or acted contrary to written escrow instructions.

17. What if an owner does not sell to a Qualified Entity? [Government Code Section 65863.11(n)]

An owner must certify, prior to the close of escrow and under penalty of perjury, that he/she has complied with all the provisions of *Government Code Sections 65863.10 and 65863.11*. This certification must contain a legal description of the property, be indexed to the name of the owner as grantor, and be legally recorded.

18. How may Qualified Preservation Transactions be exempted from Notice requirements?

Owners who intend to prepay a federally-assisted mortgage may accept a bona fide offer from a preservation purchaser who agrees to maintain long term (30 years or more) rent and use restrictions to preserve the development as part of the affordable housing stock. Low-income use and rent restrictions must be continued through a recorded regulatory agreement.

Government Code Section 65863.13, enacted in July 2001 as urgency measure SB 429, exempts certain bona fide preservation finance transactions (typically bond and tax credit financings) from the State Preservation Notice requirements of *Government Code Section 65863.10 and 65863.11*, if all the required special conditions outlined below are met.

Note: Exemption from the State Preservation Notice Requirements only applies to owners prepaying a federally-assisted mortgage not to owners terminating Section 8 project-based rental assistance or other rent restrictions. Owners are still required to meet Federal Prepay Notice Requirements.

19. What must recorded regulatory agreements contain to exempt owners from State Notice requirements? [Government Code Section 65863.13(a) (1-6)]

a. **Displacement Prohibited** - [Government Code Section 65863.13(a) (1)]
No tenant, residing in the development on the date of prepayment, will be involuntarily displaced on a permanent basis due to prepayment of the federally-assisted mortgage, unless the tenant has breached the terms of the lease.

b. **Project-based Section 8 Renewals** - [Government Code Section 65863.13(a) (2)] Owners must accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available.

- c. **Section 8 Preservation and Other Section 8 Vouchers** - *[Government Code Section 65863.13(a) (3)]* Owners must accept all Preservation Section 8 vouchers and all other Section 8 vouchers for vacancies.
- d. **Termination of Tenancy** - *[Government Code Section 65863.13(a) (4)]* New owners cannot terminate a tenancy at the end of a lease term, unless the tenant has demonstrated a breach of the lease.
- e. **Screening Criteria – Tenant’s Source of Income** - *[Government Code Section 65863.13(a) (5)]* In selecting eligible applicants for admission, new owners may consider the amount of a prospective tenant’s income, as long as they also adequately consider other factors relevant to an applicant’s ability to pay rent.
- f. **Regulated Rents** -
 - (i) Assisted Units - Project-based Section 8 - *[Government Code Section 65863.13(a) (6) (A)]* For any project-based Section 8 assisted units that subsequently become unassisted by any form of Section 8 assistance, rents shall not exceed 30 percent of 60 percent of the area median income.
 - (ii) Unassisted Units - *[Government Code Section 65863.13(a) (6) (B)]* For unassisted units and units that do not have project-based Section 8 assistance and that will remain unassisted or become unassisted by any form of Section 8 assistance, rents shall not exceed the greater of:

30 percent of 50 percent of the area median income

Or

For projects insured under Section 241(f) of the National Housing Act, the regulated rents under the terms of that program, expressed as a percentage of area median income.

- g. **Section 8 Assistance (Rents and Occupancy)** - *[Government Code Section 65863.13(a) (6) (A-B)]* If any form of Section 8 assistance is or becomes available, rent and occupancy levels will be set in accordance with Section 8 program federal regulations.

20. Who can I contact for more information?

Contact the Department of Housing and Community Development, Division of Housing Policy Development at 916 445-4728 or visit the preservation section of HCD’s website at <http://www.hcd.ca.gov/hpd/hrc/tech/presrv/>. This site contains links to other preservation sites.

Glossary of Terms

Government Code Section 65863.10(a)(1-2)]

- **Affected Public Entities** – The Mayor of the city in which the assisted housing development is located, or, if located in an unincorporated area, the Chairperson of the Board of Supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.
- **Affected Tenant** – A tenant household residing in an assisted housing development.
- **Assisted Housing Development** – A multifamily rental development that receives governmental assistance under identified federal programs.
- **Prepayment** – Payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an identified assisted housing development that would have the effect of removing the current low-income affordability restrictions contained in the applicable laws and regulatory agreement.
- **Termination** – An owner's decision not to extend or renew participation in a federal subsidy program for an identified assisted housing development either at or prior to the scheduled date of the expiration of the contract, or a decision to terminate the rental restrictions for an assisted housing development, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

Glossary of Terms

[Government Code Section 65863.11(a) (1) – (14)]

- **Owner** – An individual, corporation, association, partnership, joint venture, or business entity that holds title to an assisted housing development.
- **Tenant** – A tenant, subtenants, lessee, sub lessee, or other person legally in possession or occupying the assisted housing development.
- **Tenant Association** – A group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose include the acquisition of an assisted housing development and that represents the interest of at least a majority of the tenants in the assisted housing development.
- **Low or Moderate Income** – Having an income as defined in Section 50093 of the Health and Safety Code.
- **Very Low Income** – Having an income as defined in Section 50052.5 of the Health and Safety Code.
- **Local nonprofit organizations** – Not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title I of the Corporations Code, that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community-based and have a proven track a record of local community service.
- **Local public agencies** – Housing authorities, redevelopment agencies, or other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.
- **Regional or national organizations** – Not-for-profit charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income.

- **Regional or national public agencies** – Multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.
- **Use restrictions** – Any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development, or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.
- **Profit-motivated organizations or individuals** – Individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations Code, that carry on business for profit.
- **Offer to purchase** – An offer from a qualified or nonqualified entity that is nonbonding on the owner.

Glossary of Terms
[Government Code Section 65863.13 (a) (2) & (b)]

- **Fiscal Viability** - The property is deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the established regulated rent levels.
- **Regulatory Agreement** – An agreement, with a governmental agency for any governmental program, that applies to developments exempt from the State Preservation Notice Requirements